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Wanda Pepin

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

Wanda Pepin,

Plaintiff,

v.

Capital One, National Association, and
DOES 1 through 100 inclusive,

Defendants.

CASE NO.

PLAINTIFF’S COMPLAINT FOR DAMAGES:

1. Violation of the Rosenthal Fair Debt Collection Practices Act
2. Violation of the Telephone Consumer Protection Act

COMES NOW Plaintiff Wanda Pepin, an individual, based on information and belief, to allege as follows:

INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant’s violations of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788, *et seq.* (hereinafter “Rosenthal Act”), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices and violation of the Telephone Consumer Protection Act 47 U.S.C. §227, *et seq.* (hereinafter “TCPA”), which prohibits the use of automated dialing equipment when making calls to consumers.

1 10. At all relevant times, Defendant acted as a “debt collector” within the meaning of Cal.
2 Civ. Code §1788.2(c)

3 11. Plaintiff had taken out an unsecured loan with Capital One on or about May of 2015.

4 12. The loan Plaintiff took from Defendant Capital One was extended primarily for
5 personal, family or household purposes and is therefore a “debt” as that terms is defined by the
6 Calif. Civil Code § 1788.2(d) of the Rosenthal Act.

7 13. Defendant Capital One has been attempting to collect on a debt that originated from
8 monetary credit that was extended primarily for personal, family, or household purposes, and
9 was therefore a “consumer credit transaction” within the meaning of Calif. Civil Code §
10 1788.2(3) of the Rosenthal Act.

11 14. Because Plaintiff, a natural person allegedly obligated to pay money to Defendant
12 Capital One arising from what Plaintiff is informed and believes was a consumer credit
13 transaction, the money allegedly owed was a “consumer debt” within the meaning of
14 California Civil Code § 1788.2(f) of the Rosenthal Act.

15 15. Plaintiff is informed and believes that Defendant is one who regularly collects or
16 attempts to collect debts on behalf of themselves, and is therefore a “debt collector” within the
17 meaning of the Calif. Civil Code § 1788.2(c) of the Rosenthal Act, and thereby engages in
18 “debt collection” within the meaning of the California Civil Code § 1788.2(b) of the Rosenthal
19 Act, and is also therefore a “person” within the meaning of California Civil Code § 1788.2(g)
20 of the Rosenthal Act.

21 16. Plaintiff’s account was an unsecured loan and Plaintiff began making payments on the
22 accounts.

23 17. Plaintiff began making payments on the loan before she became financially unable to
24 keep up with the monthly payments.

25 18. Defendant Capital One began contacting Plaintiff in April of 2017 to inquire about the
26 status of the loan and to collect on the payments that were no longer being made.

27 19. Plaintiff retained counsel to assist in dealing with Capital One debt and to seek some
28 type of financial relief.

 20. Counsel for Plaintiff sent Defendant Capital One a letter confirming representation of
Plaintiff and that Defendant was to no longer contact Plaintiff directly and that all
calls/letters/collection efforts were to no longer be directed at Plaintiff.

1 21. Counsel for Plaintiff sent the letter of representation to Capital One on or about May
2 30, 2017.

3 22. Plaintiff informed Capital One that she was revoking her consent, if it was ever
4 previously given, to be called on her telephone in May of 2017.

5 23. Plaintiff denies she ever gave her express consent to be contacted on her cellular
6 telephone by automatic dialing machines and pre-recorded messages.

7 24. Defendant Capital One continued to contact Plaintiff between approximately May 30
8 2017 – at least June 22, 2017; the type of contact was through phone calls to Plaintiff on her
9 cellular telephone.

10 25. Despite notice being sent Defendant continued to contact Plaintiff on her cellular
11 telephone regarding collection of her outstanding debt.

12 26. Plaintiff was contacted frequently regarding non-payment of the debt owed to Capital
13 One despite Capital One being notified that Plaintiff had retained counsel to deal specifically
14 with the debt owed to Capital One.

15 27. Capital One's calls were frequent in nature and continued despite receiving written
16 confirmation that Plaintiff was represented by an attorney.

17 **FIRST CAUSE OF ACTION**
18 (Violation of the Rosenthal Act)
19 (Cal. Civ. Code §§ 1788-1788.32)
20 (Against Defendant and Does 1-100)

21 28. Plaintiff realleges and incorporates herein the allegation in each and every paragraph
22 above as though fully set forth herein.

23 29. Plaintiff provided written notice that she was represented by sending Defendant a letter
24 with the name, address, and contact information of her attorney and informed Defendant that she
25 was represented.

26 30. Defendant continued to call and attempt to make contact with Plaintiff despite receiving
27 notice of representation and being informed that Plaintiff had retained counsel in an effort to deal
28 with the debt that was owed to Defendant.

31. The calls and communications made by Defendant to Plaintiff were not related to
statements of Plaintiff's account and were attempts to collect a debt.

32. Plaintiff received frequent calls from Capital One from at least May 30, 2017 – June 26,
2017.

1 33. Defendant violated Cal. Civ. Code §1788.14 by contacting Plaintiff after receiving
2 noticed that Plaintiff had retained an attorney.

3 34. Defendant received notice regarding Plaintiff's retention of counsel but continued to
4 contact Plaintiff.

5 **SECOND CAUSE OF ACTION**

6 (Violation of the TCPA)

(47 USC § 227)

(Against Defendant and Does 1-100)

7 35. Plaintiff realleges and incorporates herein the allegation in each and every paragraph
8 above as though fully set forth herein.

9 36. Since at least about May of 2017 Defendant started calling Plaintiff's cellular telephone
10 requesting that payment be made on the accounts Plaintiff held with Defendant.

11 37. Plaintiff informed Defendant that she was revoking consent to be contacted by Capital
12 One in early May of 2017.

13 38. Capital One continued to call Plaintiff frequently since Plaintiff withdrew her consent
14 to be contacted by an automatic dialing machine.

15 39. Defendant would contact Plaintiff frequently each day regarding payment on the
16 accounts.

17 40. Defendant placed the above cited calls using an artificial or prerecorded voice to deliver
18 the collection messages without Plaintiff's prior express consent.

19 41. Defendant contacted Plaintiff on at least 22 (twenty two) separate occasions after
20 Plaintiff informed Defendant she did not wish to be contacted on her cellular telephone and
21 withdrew any prior consent that may have been given.

22 42. All calls placed by Defendant to Plaintiff utilized an "automatic telephone dialing
23 system" as defined by 47 U.S.C. §227(a)(1).

24 43. These calls were made to Plaintiff's cellular telephone and were not calls for an
25 emergency purposed as defined by 47 U.S.C. §227(b)(1)(B).

26 44. These telephone calls by Defendant, or its agent, violated 47 U.S.C. §227(b)(1)(B).

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff prays for judgment as follows:

- a. An award of actual damages pursuant to California Civil Code §1788.30(a), as

1 will be proven at trial, which are cumulative and in addition to all other
2 remedies provided for in any other cause of action pursuant to California Civil
3 Code §1788.32.

- 4 **b.** An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code
5 §1788.30(b), which are cumulative and in addition to all other remedies
6 provided for in California Civil Code §1788.32; and
7 **c.** An award of costs of litigation and reasonable attorney's fees pursuant to Cal.
8 Civ. Code §1788.30(c).
9 **d.** An award of statutory damages of \$1,500.00 pursuant to 47 U.S.C.
10 §227(b)(3)(C) for each and every violation.
11 **e.** Pursuant to 47 U.S.C. §227(b)(3)(A), injunctive relief prohibiting such conduct
12 in the future.
13 **f.** Pursuant to 15 U.S.C. 1692(k) both actual damages and statutory damages in an
14 amount to be proven at trial.

15 Dated: September 15, 2017

16 **SAGARIA LAW, P.C.**
17 By: /s/ Scott Johnson
18 Scott Sagaria, Esq.
19 Scott Johnson, Esq.
20 Attorneys for Plaintiff

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff hereby demands trial of this matter by jury.

23 Dated: September 15, 2017

24 **SAGARIA LAW, P.C.**
25 /s/ Scott Johnson
26 Scott Sagaria, Esq.
27 Scott Johnson, Esq.
28 Attorneys for Plaintiff